

COOPERATING AGENCY AGREEMENT
between the
FEDERAL AVIATION ADMINISTRATION
and the
HUALAPAI INDIAN TRIBE

The COOPERATING AGENCY AGREEMENT (Agreement) is by and between the Federal Aviation Administration (FAA) as federal lead agency, and the Hualapai Indian Tribe (Hualapai Nation), a federally recognized Indian tribe acting as a cooperating agency for the Supplemental Environmental Assessment (SEA) for the Proposed action relating to air tour operations in the vicinity of the Grand Canyon National Park described herein. This Agreement is consistent with the purposes and intent of the national Environmental Policy Act of 1969, 42 U. S. C. §§ 4321 *et seq.*, as amended (NEPA). It is also consistent with the purposes and intent of the guidance and regulations of the Council on Environmental Quality (CEQ) at 40 C. F. R. Parts 1500-1508.

WHEREAS, the FAA intends to prepare a SEA for following Proposed Action:

- (1) new and modifications to existing air tour routes for commercial aircraft operating in the Special Flight Rules Area (SFRA) in the vicinity of the Grand Canyon National Park, identified as Special Federal Aviation Regulation Number 50-2 (SFAR-50-2);
- (2) new and modifications to the airspace in the SFRA; and,
- (3) a limitation on the number of operations by commercial air tour aircraft in the SFRA,

WHEREAS, the purpose of this Agreement between the FAA and the Hualapai Nation is:

- (1) to confirm the formal designation of the Hualapai Nation as a cooperating agency with special expertise, i.e., jurisdictional responsibilities for the lands, resources (including wildlife, culture, society religious practices, and economy of the Hualapai Nation and relevant to the SEA process for the Proposed Action;
- (2) to provide a framework for cooperation and coordination in completion on the SEA for the Proposed Action;

(3) to define the respective roles and obligations of the FAA and the Hualapai Nation in the SEA process; and

(4) to endure that the working relationship between the FAA and the Hualapai Nation meets the intent of NEPA and NEPA guidance and regulations,

WHEREAS, NEPA directs agencies for the Federal Government, including the FAA, "...to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may... wherever possible, an environment which supports diversity and variety of individual choice..." (42 U. S. C. § 4331(b)(4));

WHEREAS, the NEPA regulations of the CEQ codified at 40 C. F. R. Parts 1500-1508, apply to the FAA;

WHEREAS, CEQ regulations provide that when the effects of a major Federal action significantly affecting the quality of the human environment are on a reservation, an Indian tribe may, by agreement with the lead agency, become a cooperating agency (40 C. F. R. § 1508.5),

WHEREAS, CEQ regulations only address cooperating agencies and adoption in terms of preparing environmental impact statements;

WHEREAS, FAA's environmental policies and procedures recognize that certain portions of the CEQ regulations concerning environmental impact statements also apply to environmental assessments, but with less rigor, i.e. FAA Order 5050.4A, Airport Environmental Handbook, Section 47(c)(1): "The CEQ Regulations include specific directions on the consideration of alternatives. These directions are concerned with the environmental impact statement. However, they are to be considered in preparing an environmental assessment to the degree commensurate with the nature of the proposed action";

WHEREAS, CEQ regulations concerning environmental impact statements provide that the lead agency shall use the environmental analysis and proposals of cooperating agencies with special expertise to the maximum extent possible consistent with its responsibility as lead agency (40 C. F. R. § 1501.6(a)(2));

WHEREAS, CEQ regulations concerning environmental impact statements provide that the lead agency shall meet with a cooperating agency at the cooperating agency's request (40 C. F. R. § 1501.6(a)(3));

WHEREAS, CEQ regulations concerning environmental impact statements provide that the cooperating agency will participate in the NEPA

process at the earliest possible time and participate in the scoping process (40 C.F. R. §§ 1501.6(b)(1) and (2));

WHEREAS, CEQ regulations concerning environmental impact statements provide that the cooperating agency will assure on request of the lead agency responsibility for developing information and preparing environmental analysis concerning which the cooperating agency has special expertise (40 C.F. R. §§ 1501.6(b)(3));

WHEREAS, the FAA is the lead agency for the Proposed Action and as lead agency will supervise the preparation of the environmental assessment for Proposed Action;

WHEREAS, the Proposed Action may have effects on the Hualapai Indian Reservation;

WHEREAS, the Hualapai Indian Reservation is under the jurisdiction of the Hualapai Nation, a sovereign entity that enjoys a government-to-government relationship with the United States;

WHEREAS, the FAA recognizes the Hualapai Nations special expertise to assist the FAA in evaluating the environmental impacts of the Proposed Action upon the Hualapai Indian Reservation;

WHEREAS, the FAA as lead agency, has requested the Hualapai Nation to participate in this action as a cooperating agency;

WHEREAS, CEQ regulations provide that the cooperating agency shall normally use its own funds but the lead agency shall, to the extent available funds permit, find those major activities or analysis it requests from the cooperating agencies (40 C.F.R., §§ 1501,6(b)(5));

WHEREAS, the Hualapai Nation requires funding assistance from the FAA to fully participate as a cooperating agency; and

NOW, THEREFORE, the parties agree as follows:

1. The Hualapai Nation will serve as cooperating agency for the SEA for the Proposed Action, with the rights and duties of a cooperating agency as set forth in this Agreement and the CEQ regulations at 40 C. F. R. Parts 1500-1508 as applicable and commensurate of an EA.

2. The FAA will work cooperatively with the Hualapai Nation to ensure full access to non-privileged FAA expertise and factual data, information, analysis, and public comments received related to the specialized expertise of the Hualapai

Nation so that the Hualapai Nation may competently carry forth its responsibilities as cooperating agency. The FAA will promptly forward to the Hualapai Nation at no charge all information required by this Agreement. Also, if requested by the Hualapai Nation, any other information in the FAA's possession or control that is directly relevant to the Hualapai Nation's Cooperating Agency functions and releasable under the Freedom of Information Act 5 USC552. The FAA will meet with the Hualapai Nation at its request, shall give the Hualapai Nation advance notice of all meetings and supporting studies concerning the SEA in which FAA participants, and shall provide funding for the Hualapai Nation's participation pursuant to Paragraph 14 of this Agreement.

3. The FAA will incorporate in the Draft SEA and Final SEA to the maximum extent possible consistent with its responsibility as lead agency the suggested changes, analysis, recommendations, and data submitted by the Hualapai Nation. The Hualapai Nation will review fully all information supplied by the FAA within the limits of the Hualapai Nation's special expertise and provide any written comments and analysis within the timeframe specified by the FAA. The Hualapai Nation need not use the methodologies or standards selected by FAA, but may instead, at the Hualapai Nation's option, use methodologists and standards appropriate to its environmental settings in providing comments.

4. The FAA shall give the Hualapai Nation the opportunity to participate in the identification of representative locations within the Hualapai Indian reservation for noise modeling. FAA will consider requests to participate in studies conducted for the SEA to the extent relevant to the cooperating agency functions of the Hualapai Nation.

5. The FAA has provided the Hualapai Nation with a preliminary Draft SEA and all data used in the preparation of the preliminary Draft SEA relevant to the Hualapai Nation's areas of expertise i.e., the Hualapai Nation's land, resources (including wildlife), culture, society, religious practices and economy. The Hualapai Nation will provide the FAA with comments, including any suggested changes to the preliminary Draft SEA and/or advise the FAA of the Hualapai Nation's opinion that the FAA should collect additional data and conduct additional analysis by June 21, 1999. The FAA shall consider publishing as an appendix to the Final SEA any of the submissions designated by the Hualapai Nation for inclusion in an appendix as provided for the Paragraph 3, above or shall make such submissions public availability.

6. The FAA Shall promptly provide the Hualapai Nation with (1) all comments received on the Draft SEA relevant to the Hualapai Nations areas of expertise, i.e., the Hualapai Nation's land, resource, (including wildlife); culture, society, religious practices and economy; (2) other information, data, and materials pertaining to the Proposed Action received or generated subsequent to the issuance of the Draft SEA relevant to the Hualapai Nation's areas of expertise; and (3) an index to the foregoing comments and materials describing each document and the subject it concerns. Within thirty (30) days of receiving these comments and information, but no later than ten (10) days after close of the public comment period of the DSEA, the Hualapai Nation will provide the FAA with comments, including any suggested changes to the DSEA and/or advise the FAA of the Hualapai Nation's opinion that the FAA should collect additional data and conduct additional analysis.

7. The FAA shall incorporated the Huallapai Nation's suggested changes to the Draft SEA as appropriate consistent with FAA responsibilities as lead agency. These changes may include analyses, studies, recommendations and/or data. The FAA will provide the Hualapai Nation with a preliminary Final SEA when it

becomes available. Within fifteen (15) days of receiving the preliminary Final SEA, the Hualapai Nation shall notify the FAA whether it wishes any of its submissions to be published as an appendix to the Final SEA. The FAA shall consider publishing in an appendix to the Final SEA any submissions so designated by the Hualapai Nation as provided in Paragraph 3. Alternatively, such submissions shall be referenced in the SEA with a statement they publicly available.

8. The Hualapai Nation's comments on the preliminary Draft SEA and Draft SEA will remain within the scope of its special expertise on the Hualapai Nation's lands, resources, culture, society, religion and economy.

9. The FAA shall acknowledge in the Draft SEA and the Final SEA any areas of conflict where its conclusions differ from the Hualapai Nation in those areas where the Hualapai nation has special expertise.

10. The FAA will promptly inform the Hualapai Nation of all schedule changes that may affect the time afforded the Hualapai Nation to perform its cooperating agency functions. When schedule changes are necessary, the FAA will consider requests from the Hualapai Nation for additional time to perform its cooperating agency functions.

11. The Hualapai Nation will keep confidential and protect from public disclosure any and all documents received from FAA prior to determination by the FAA of releaseability, subject to the directives of the Freedom of Information Act 5 U. S. C. § 552, and other applicable law. The FAA will keep confidential and protect from public disclosure any and all documents or portions thereof received from the Hualapai Nation which the Hualapai Nation designates as confidential, subject to the directives of 5 U. S. § 552 and other applicable law. This paragraph shall not apply to documents specifically designated by the Hualapai Nation for inclusion in the Draft SEA and/or Final SEA, or to documents that have been previously released to the public. Both parties agree to impose the requirement of this paragraph upon their consultants, and the release of documents to those consultants shall not be deemed public disclosure. This paragraph does not alter the confidentiality provisions of the Ethnographic Study Statement of Work entered into between the parties on March 24, 1998.

12. Each party agrees to select qualified representatives and consultants to carry out its responsibilities under this Agreement. Each party agrees that its consultants shall execute disclosure statements specifying that they have no financial interest in the outcome to the project pursuant to 40 C. F.R. § 1506.5(c). No such disclosure statement shall be required of the Hualapai Nation or its representatives, as distinguished from its consultants. Subject to this paragraph, each party shall have sole discretion to select its representatives and consultants.

13. The Primary contact for each party shall be the individuals designated in subparagraph (a) below. A party may change its primary contact person by written notice to be other party. All notices, documents, information, and communications required by this Agreement shall be directed to the primary contact person, and carbon copied (including attachments and enclosures) to the persons designated in subparagraph (b) below. Notwithstanding the foregoing, the Hualapai Nation, its consultants and representatives may communicate directly with any individuals within the FAA or the National Park Service, the other cooperating agency regarding the S EA or the Proposed Action when appropriate. Any official communications concerning responsibilities under the cooperating agency agreement shall be directed to the primary point of contact.

(a)Primary contacts:

(1)Hualapai Nation:

Monza Honga, Tribal Historic Preservation Officer
Department of Cultural Resources
The Hualapai Nation
P. O. Box 310
878 West Highway 66
Peach Spring, AZ 86434
Voice: (520) 769-2223-2234
Facsimile: (520) 769-2235

(2)FAA

William J. Marx, Division Manager
Air Traffic Environmental Programs, ATA-300
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
Voice: (202) 267-9367
Facsimile: (202) 267-5809

(b) Copies to:

(1)Law Offices

Teresa Isabel Leger, Esq.
Susan G. Jordan
Nordhaus, Halton, Taylor, Taradash & Frye, LLP
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Santa Fe, NM 87501
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Facsimile: (505) 982-1827

(2)FAA

Daphne A. Fuller, Manager
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Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591
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(3)DOI

Carla Mattix
Office of Solicitor
Department of Interior
1849 C Street, NW, MS-6557
Washington, DC 20240
Voice: (202) 208-7957
Facsimile: (202) 208-3877

14. The Hualapai Nation's obligations under this Agreement are conditioned upon FAA's provision of funding pursuant to this paragraph.

(a) The FAA shall reimburse the Hualapai Nation for the travel expenses of two persons to be selected by the Hualapai Nation pursuant to Paragraph 12 of this Agreement, to attend meetings as provided in Paragraph 2 of this Agreement. Reimbursable travel expenses shall be at government rate and include airfare, grounds transportation, and lodging (not to exceed one night of lodging for each consecutive day upon which meetings are scheduled or held). The FAA shall also provide a government rate per diem for each of the two persons.

(b) The FAA shall reimburse the Hualapai Nation for the Hualapai Nation's remaining costs of participation as a cooperating agency, including consultants fees and expenses, and expenses of the Hualapai Nation and its representatives, up to \$25,00 in total. The funds being made available under this agreement may not be used to pay for attorney's fees or for participation in any legal proceedings. Funds may be used to hire attorneys as consultants to interpret technical documents and studies and carry out the responsibilities of the Hualapai Nation under this agreement. However, these funds may not be used to underwrite lawsuits, to underwrite disputes with the FAA, or to challenge final agency decisions provided. This limitation on the use of funds shall in no way be deemed or understood to limit the use of information gathered or developed in the course of completing the actions associated with this agreement.

(c) As costs are incurred the Hualapai Nation shall submit invoices to the FAA contractor, PRC Inc. PRC Inc. shall modify the sub-contract for the Ethnographic Study to include the Cooperating Agency Agreement, Invoices for the Cooperating Agency Agreement shall be submitted in accordance with the procedures for reimbursement included in the Ethnographic Study Statement of Work and the associated Hualapai sub-contract with PRC Inc. It is understood that the rights and responsibilities under this Agreement and sub-contract will flow from the FAA to the Hualapai Nation. Except for invoices, the Hualapai Nation shall not be required to submit any other reports or documentation discussed or required in this agreement to PRC, Inc. The FAA shall reimburse the invoiced amounts, to the extent they do not exceed the \$25,000 limit of subparagraph (b) or the limits of subparagraph (a), whichever is applicable, within 30 days of receipt of each invoice.

15. The parties shall cooperate in good faith and shall attempt to resolve any disagreements under this Agreement by negotiation. If such negotiations do not conclude promptly and successfully, the Hualapai Nation reserves all rights under paragraph 17 of this Agreement, including but not limited to the right to challenge the adequacy of the FAA's NEPA compliance on the grounds raised.

16. By this Agreement, the FAA does not relinquish or delegate its primary responsibilities for NEPA compliance as lead agency. The FAA will retain ultimate responsibility for the contents of the SEA, including but not limited to, the determination of the purpose and need of the Proposed Action, and range of alternatives analyzed, the preferred alternative, the Proposed Action's environmental consequences, and the conclusions of the Draft SEA and Final SEA. The Hualapai Nation assumes no responsibility for the adequacy of the SEA or for compliance with NEPA or other applicable laws and regulations with respect to the Proposed Action. Nothing in this Agreement shall be interpreted as a waiver of sovereign immunity by the Hualapai Nation

17. The Hualapai Nation reserves the right to participate in the public scoping process for the SEA and to submit comments on all aspects of the SEA during the public comment periods to the same extent as any member of the public. The Hualapai Nation's participation as a cooperating agency is not an endorsement of the Proposed Action. The Hualapai Nation reserves all of its rights to pursue any remedies whatsoever for the FAA's failure to comply with any applicable laws with respect to the Proposed Action, including but not limited to NEPA in any administrative, judicial, or legislative forum.

18. The Agreement is effective as of May 14, 1999 and will terminate when the FAA publishes the Final SEA. Thereafter, if the FAA requires additional work by the Hualapai Nation as cooperating agency, then the parties shall negotiate a schedule for that work. The FAA shall reimburse the Hualapai Nation for any

additional work subject to the availability of funds and the parties agreement upon a budget for that work. The Hualapai Nation shall not be bound to perform any additional work if the Hualapai Nation determines that the funding available for that work is inadequate and so informs the FAA.

19. This Agreement is not intended to, nor does it create any rights, benefits or trust responsibilities, substantive or procedural, enforceable at law or equity, by a party against the FAA or its operating divisions, its officers, or any person. Nor should the FAA, or its operating divisions, its officers or any person construe this Agreement to create any private right to judicial review involving compliance or noncompliance with the terms to this Agreement.

_William J. Marx
William J. Marx
Division Manager
Air Traffic Environmental Programs
Federal Aviation Administration

_7/26/99
Date

_Edgar Walema
Edgar Walema
Vice-Chairman
The Hualapai Nation

_7/26/99
Date